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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Gaetan L. Mathieu

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3919

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N. KENNETH BURRASTON

KIRTON & MCCONKIE

P.O. BOX 45120

SALT LAKE CITY, UT 84145-0120

EXAMINER

CHANG, RICK KILTAE

ART UNIT

PAPER NUMBER

3726

NOTIFICATION DATE

DELIVERY MODE

11/25/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ecowles@kmclaw.com

kburraston@kmclaw.com

patents@formfactor.com

<b>Office Action Summary</b>	<b>Application No.</b> 09/527,931	<b>Applicant(s)</b> MATHIEU ET AL.	
	<b>Examiner</b> Rick K. Chang	<b>Art Unit</b> 3726	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 July 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 71-75,77-88,102-112 and 114-123 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 71-75,77-88,102-112 and 114-123 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/17/09,9/8/09</u> .                                         | 6) <input type="checkbox"/> Other: _____                          |

Art Unit: 3726

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 87-88 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It has been held that the functional “whereby ...” statement does not define any structure and accordingly can not serve to distinguish. *In re Mason*, 114 USPQ 127, 44 CCPA 937 (1957).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 71-75, 77-88, 102-107, 109-112, 114-123 are rejected under 35 U.S.C. 102(b) as being anticipated by McQuade et al (US 5,416,429).

Re claims 71, 74 and 85-86: McQuade discloses a first substrate (20) and a second substrate (20) and their shapes are adjusted by 38s. McQuade discloses the first region is along a central longitudinal direction of 20 and a second region is close to 38s.

See Figs. 1-9.

Art Unit: 3726

Re claims 72-73, 75, 77-84, 110: 38s are independently and selectively adjusted for providing a plurality of push or pull forces or only providing push or pull forces (Fig. 9).

Re claims 87-88: see col. 1, line 14 and Figs. 1-11.

Re claims 102-107: see Figs. 1-11. 38s are applying numerous regions of the first and second substrates.

Re claims 109, 114: 14 is a reference structure and see Figs. 1-9.

Re claims 111-112: Fig. 3 is a first planar relationship and Fig. 9 is a second planar relationship.

Re claims 115-121: see Fig. 9.

Re claim 122-123: 45 is a monolithic continuous surface.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 108 is rejected under 35 U.S.C. 103(a) as being unpatentable over McQuade et al (US 5,416,429).

McQuade discloses in col. 9, lines 54-59 that the substrates can assume various orientations, except for a curvature.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to change the cantilevered portion having a curved shape to accommodate devices having curved surfaces during testing.

Art Unit: 3726

Therefore, it would have been an obvious matter of design choice to modify McQuade to obtain the invention as specified in claim 108.

“When there is design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill as a good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product is not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show it was obvious under 35 U.S.C. 103.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 82 USPQ2d 1385, 1396 (2007). Since McQuade discloses in col. 9, lines 54-59 that the substrates can assume various orientations, it would have been obvious to change the cantilevered portion having a curved shape to accommodate devices having curved surfaces during testing.

### ***Response to Arguments***

7. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Interviews After Final***

8. Applicant note that an interview after a final rejection must be submitted briefly in writing the intended purpose and content of the interview (the agenda of the interview must be in writing). Upon review of the agenda, the Examiner may grant the interview if the examiner is convinced that disposal or clarification for appeal may be accomplished with only nominal further consideration. Interviews merely to restate arguments of record or to discuss new limitations will be denied. See MPEP 714.13 and 713.09.

### ***Conclusion***

Art Unit: 3726

9. Please provide reference numerals (either in parentheses next to the claimed limitation or in a table format with one column listing the claimed limitation and another column listing corresponding reference numerals in the remark section of the response to the Office Action) to all the claimed limitations as well as support in the disclosure for better clarity (optional).

Applicants are duly reminded that a full and proper response to this Office Action that includes any amendment to the claims and specification of the application as originally filed requires that the applicant point out the support for any amendment made to the disclosure, including the claims. See 37 CFR 1.111 and MPEP 2163.06.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rick K. Chang whose telephone number is (571) 272-4564. The examiner can normally be reached on 5:30 AM to 1:30 PM.

Art Unit: 3726

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David P. Bryant can be reached on (571) 272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rick K. Chang/  
Primary Examiner, A.U. 3726

RC  
November 23, 2009